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ATTORNEYS FOR DEFENDANT
DUKE ENERGY RENEWABLES, INC.

**IN THE UNITED STATE DISTRICT COURT
FOR THE DISTRICT OF WYOMING**

UNITED STATE OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Criminal No. 13-CR-268-R
)	
DUKE ENERGY RENEWABLES, INC.)	
)	
Defendant.)	
)	

DEFENDANT’S FOURTH ANNUAL PROBATIONARY REPORT

INTRODUCTION

Pursuant to the plea agreement (Doc. 2 § 15(b)(i)) (“Agreement”) and the judgment (Doc. 8 at 2 & attach. B thereto), defendant Duke Energy Renewables, Inc. (“DER”) submits this report to the Court, the U.S. Fish & Wildlife Service (“USFWS”), and the U.S. Department of Justice (“DOJ”) by and through the U.S. Attorney, District of Wyoming and the Environment

and Natural Resources Division (collectively, “Department”) concerning DER’s progress in implementing the Migratory Bird Compliance Plan (“MBCP”). Pursuant to the plea and judgment, DER agreed to implement the MBCP with the assistance of the USFWS and Department. The MBCP is attached as Attachment B to both the plea and judgment.

SUMMARY

Since sentencing on November 22, 2013, DER has continued to make substantial progress in implementing and has nearly completed implementation of the MBCP. At the conclusion of this fourth year of probation, DER has now met all applicable deadlines and performed all required tasks due to be completed within 48 months of sentencing. The fourth annual meeting required under the MBCP was held on September 14, 2017, in Cheyenne, Wyoming. During this meeting, the Department and USFWS concurred with this assertion. Additional deadlines and tasks required to be completed beyond 48 months of sentencing will be addressed as applicable in future annual reports.

JUDGMENT REQUIREMENTS

The judgment imposed a sentence of unsupervised probation for a term of sixty (60) months. Consistent with its conditions of probation, DER has:

- paid its special assessment, fine, and restitution payments as ordered by the Court;
- performed its community service by making the required payments;
- met with the USFWS and the Department on April 29, 2014, October 21, 2014, May 27, 2015, December 10, 2015, September 15, 2016, and September 14, 2017, to discuss DER’s progress in implementing the MBCP and to address any issues or amendments necessary to ensure the MBCP’s effectiveness;
- developed and is in the process of implementing the final parts of the MBCP, as described in more detail below.

MBCP REQUIREMENTS

Under the MBCP, DER was required to undertake certain tasks within 3, 6, 12, 18, and 24 months of sentencing, which occurred on November 22, 2013. Following is an assessment of DER's progress in implementing the MBCP.¹

1. Bird and Bat Conservation Strategy ("BBCS"). As described in the First Annual Probationary Report, DER completed an initial revision of the BBCSs for each of the four wind sites covered under the Agreement in accordance with the 2012 USFWS Land-Based Wind Energy Guidelines. The BBCSs for the Campbell Hill Wind ("CHW") and Top of the World ("TOTW") wind energy projects are included as an Appendix to the draft Eagle Conservation Plans ("ECP") for these projects. DER, per the recommendations of the Department of Interior Office of Acquisition and Property Management Debarment Program, updated the BBCSs for all four wind projects (TOTW, CHW, Happy Jack Wind, and Silver Sage Wind) in 2016. Since no significant changes to project operations have occurred over the last year, no updates to the BBCSs were performed in 2017. Once the ECPs for the CHW and TOTW project are finalized, a revision to these BBCSs will be done to reflect all conservation measures outlined in the final ECPs.

2. Tier 5 Golden Eagle Analysis. As noted in the MBCP, DER has collected a significant amount of Tier 2, 3, 4, and 5 data as identified in this section.

- 2.1 Focus of MBCP shall be on golden eagles at the TOTW project and CHW project: No action required.
- 2.2 Analysis of Tier 2-5 data to be completed within 12 months of sentencing: Completed, as described in the First Annual Probationary Report.
- 2.3 Additional data collected in the first 24 months of the probation term will be used to update this analysis and be included in the ECP development: Completed. As described in Section 6 below, DER submitted draft ECPs for TOTW and CHW to

¹ For ease of review, section citations below correspond to sections of the MBCP.

USFWS on November 19, 2015. Additional data collection and analysis have occurred including completing an orographic lift model, collecting additional eagle-use data as part of our Informed Eagle Curtailment program, and coordinating with USFWS on eagle movements through analysis of GPS-fitted eagles (see Section 3.3.4.3 below). These data and analysis will be integrated into the updated ECPs.

3. Experimental Advanced Conservation Practices.

3.1 Measures to be implemented at the four sites (TOTW, CHW, Happy Jack Wind site, and Silver Sage Wind site):

3.1.1 Carrion removal: Completed. Implemented upon the date of sentencing and is an ongoing practice.

3.1.2 Removal of man-made habitat features that may harbor prey species: Completed, as reported in the First Annual Probationary Report.

3.2 Best Management Practices and other single-event actions to be implemented at TOTW.

3.2.1 Removal of roadkill carcasses along SR 95: Completed. Implemented within 90 days of sentencing and ongoing at a weekly frequency.

3.2.2 Removal of two guyed meteorological towers: Completed, as reported in the First Annual Probationary Report.

3.2.3 Adjusted Wind Turbine Operation March 15 – October 15: Completed. The Siemens turbine control software was modified on March 5, 2015, and the turbines have been operating in this mode from March 5, 2015, to present.

3.3 Ongoing Experimental Advanced Conservation Practices to be implemented at TOTW.

3.3.1 Visual deterrent testing: Completed, as reported in the First Annual Probationary Report.

3.3.2 Audible deterrent testing: Completed, as reported in the First Annual Probationary Report.

3.3.3 “Informed Curtailment” at TOTW: Informed eagle curtailments at the TOTW site were initiated ahead of schedule by DER on March 5, 2014, and have been ongoing at TOTW since. USFWS and DER worked cooperatively to develop an interim protocol for informed eagle curtailment. Further improvements and refinements (including the construction of an eagle observation tower) have been completed with additional improvements ongoing based upon operational experience. Up to six Eagle

Observation Specialists have been contracted and are on the TOTW site daily implementing the Informed Eagle Curtailment program. Continual refinements to the Informed Eagle Curtailment program have been made, including the use of the IdentiFlight camera systems (see item 3.5 below).

3.3.4 Test detection technologies at TOTW.

3.3.4.1 Radar proof-of-concept test: Completed, as reported in the First Annual Probationary Report.

3.3.4.2 Radar study evaluation: No material advancements of radar technology have been identified by DER, and USFWS has concurred with this assessment.

3.3.4.3 Consideration of combining detection/deterrent technologies: Ongoing, per requirement. DER continues coordinating with the American Wind Wildlife Institute on a Technology Verification Program and working with them on a Department of Energy funded project further evaluating detection/deterrent technologies at operating wind sites, including TOTW. DER continues to work cooperatively with USFWS on the trapping and fitting of golden eagles with GPS tracking devices on the TOTW site with two additional eagles trapped and fitted. These GPS-fitted eagles are providing useful information on eagle migration patterns, timing, and use of the TOTW site. Additional eagle trapping is planned at the TOTW site in late 2017.

3.4 Implementation of Experimental Advanced Conservation Practices (ACPs): A human-based Informed Eagle Curtailment Program is ongoing at the TOTW site.

3.5 Development and evaluation of other Experimental Advanced Conservation Practices: DER continues partnering with a camera detection technology developer. A camera detection system known as IdentiFlight is currently installed at TOTW with four beta units located on site. These four IdentiFlight units have undergone additional engineering and software upgrades and improvements. The American Wind Wildlife Institute coordinated an independent proof-of-performance (PoP) test of the system in the summer and fall of 2016. Field data collection and data analysis are now complete. A summary presentation of the findings of this PoP test was given by AWWI at the September 14, 2017 annual meeting with DOJ and USFWS. Publication of the PoP test results is expected at the end of 2017. Results have all been positive.

As a result of this PoP test and ongoing communication with USFWS, DER has decided to install 20 new IdentiFlight camera units at TOTW. These first 20 units constitute a “Phase I” of IdentiFlight integration where the 44 Siemens turbines will be covered by IdentiFlight. Phase II covering the remaining 66 GE turbines

may be installed at a later date, assuming continued positive results from Phase I and other considerations.

4. Monitoring. DER worked cooperatively with the USFWS on the development of a fatality monitoring protocol, which was finalized by DER on August 15, 2014. The monitoring began on September 15, 2014 and is ongoing.

- 4.1 Research.

- 4.1.1 – 4.1.4 Searcher-efficiency and carcass-persistence trials and bias-correction development: Completed. The research protocol was approved by USFWS and was concluded in June 2016 with the summary of results provided to USFWS.

- 4.2 Golden eagle fatalities.

- 4.2.1 Notification within 24 hours of golden eagle fatalities at TOTW, CHW, Happy Jack and Silver Sage wind projects: Ongoing, per requirement. DER has continued to report eagle carcasses to USFWS within 24 hours of DER knowledge of discovery; since sentencing four years ago (November 2013), a total of thirty-one have been reported to USFWS.

- 4.2.2 Special Purpose – Utility (SPUT) permit: DER applied for and received SPUT permits for the four Wyoming wind sites. Permits were received on May 17, 2017, and are valid until March 31, 2020.

- 4.3 Use of Ornicept/Geotraverse monitoring software: Ornicept went out of business, and the Ornicept/Geotraverse software is no longer available. DER has been recording and managing eagle fatality data through an internally developed data form. This was communicated to the Department and USFWS at the September 15, 2016 meeting.

- 4.4 Continued Monitoring of golden eagle and other migratory bird fatalities: Ongoing, per requirement.

5. Compensatory Mitigation.

- 5.1 Development of Compensatory Mitigation methods during probation period: At the meetings that were held in Cheyenne, Wyoming between DER, USFWS, and the Department on October 21, 2014, May 27, 2015, December 10, 2015, September 15, 2016, and September 14, 2017, compensatory mitigation options were discussed. Discussions with USFWS staff have been ongoing. Four compensatory mitigation options are outlined and discussed in the draft ECPs.

- 5.2 Compensatory mitigation following issuance of an Eagle Take Permit: No action required at this time, as Eagle Take Permits have not yet been issued.

- 5.3 Exclusion of compensatory mitigation costs from MBCP cost cap: No action required.
- 5.4 Compensatory mitigation methods: No action required at this time. Ongoing discussions with USFWS staff on compensatory mitigation options have occurred over the past year.
- 5.5 Analysis of other compensatory mitigation techniques: Ongoing, per requirement. To date, in addition to power-pole retrofits, DER has started the evaluation of habitat-based protection/enhancement, lead abatement, and roadkill removal as potential compensatory mitigation for golden eagles. These four options are discussed in the draft ECPs.

6. Eagle Conservation Plan/Eagle Take Permits. On November 19, 2015, DER submitted Eagle Take Permit applications, associated draft ECPs, and other supporting information, which follow the 2013 Eagle Conservation Plan Guidance, for the CHW and TOTW sites. A new Eagle Permit Rule revision was finalized in December 2016. DER has reviewed this revised rule, conferred with USFWS, and determined to update the draft ECPs using the revised rule. DER and USFWS continue to work toward finalizing the two draft ECPs under the revised rule.

- 7. MBCP Term: No action required.

DATED: November 17, 2017.

Respectfully submitted,

/s/ Beau Bump

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CERTIFICATE OF SERVICE

I hereby certify that on November 17, 2017, I electronically filed the foregoing with the Clerk of the Court using CM/ECF, which will send notification of such filing to all counsel of record:

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